IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

WP(C).No. 31421 of 2006(N)

PETITIONER:

C.P.SULAIKHA,
K.V.MANZIL, NEAR RAILWAY STATION,
KANNAPURAM, P.O.CHERUKUNNU, KANNUR DISTRICT.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
KANNUR DISTRICT, KANNUR.

2. THE SPECIAL TAHSILDAR (LA),
N.H. KANNUR.

3. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT,
KERALA STATE TRANSPORT PROJECT DIVISION,
OPPOSITE MILITARY HOSPITAL, WELLESLEY ROAD,
KANNUR.

4. THE STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.31421/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: A TRUE PHOCOPY OF THE PROCEEDINGS DATED 16.10.2006 OF THE 3RD RESPONDENT.

EXT.P2: A TRUE PHOTOCOPY OF THE LETTER DATED 8.11.2006 ISSUED BY THE 1ST RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE

P.R.RAMAN, J.

W.P.(C) NO. 31421 OF 2006

Dated this the 31st day of January, 2007

J U D G M E N T

The petitioner is the owner of building No.6/794 to 806 of Kannapuram Panchayat, which is a shop building situated in Sy.No.127/7 of Kannapuram amsom and desom in Kannur District. For the purpose of widening the Pilathara-Pappinissery road, a portion of the building was sought to be acquired and Section 4(1) notification was issued. Petitioner objected to the same and decided that entire building be acquired invoking his right under Section 49(1) of the Land Acquisition Act. As a matter of fact, Exhibit P1 proceedings of the PWD Engineer would show that he has recommended the acquisition of the entire building. But the District Collector by Ext.P2 rejected the claim of the petitioner for acquiring the entire building as only 4 Sq.m is coming under acquisition and the acquisition will effect only the steps and tiled portion. The petitioner impugned Ext.P2 and seeks for a declaration that either the entire building is liable to be acquired as the proceedings initiated for acquisition of the part of the building is invalid or in the alternative to declare that the

acquisition of the part of the building is contrary to Section 49 of the Act and therefore illegal.

2. In the counter affidavit filed for and on behalf of the respondents, it is admitted that

> On inspection of the site by the concerned official it was found that cemented step and part of tiled portion of double storied tiled building situated in the land being acquired falls in the alignment.

However, the reason for rejecting the claim for acquisition of the entire building is that it will involve huge expenditure. This is not a sound reason for considering the claim of the petitioner.

3. As per Section 49 of the Land Acquisition Act,

> "the provisions of this Act shall not be in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired."
>
> (emphasis given)

Therefore there is a clear prohibition to acquire a part of a building when the whole of the building is desired to be acquired by the land owner. It is not disputed that what is sought to be acquired, form part of a building. Here, when the land owner-the petitioner having expressed his desire to acquire the entire building, legally the respondents are bound to accept the option

and acquire the entire building or drop the proposal to acquire part of the building in such circumstances is clearly prohibited and the provisions of the Land Acquisition Act itself cannot be put in motion for acquisition of a part of the building. In view of the legislative mandate as contained in Section 49(1), the order Ext.P2 is liable to be quashed and I do so.

4. It is declared that either the authorities proceed to acquire the entire building or forbear from acquiring a part of the building. It is open to the authorities to exercise their option for acquiring the entire building, within a period of three months from the date of this judgment, failing which the proceedings of acquiring of the part of the building will stand quashed.

Writ petition is disposed of as above.

P.R.RAMAN, JUDGE

Rp